

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

(Oakland, California)

BAY AREA URBAN LEAGUE, INC.  
Employer

and

Case 32-UC-390

OAKLAND AMERICAN FEDERATION OF  
TEACHERS, LOCAL 771, AFL-CIO,  
CFT/AFT  
Union

**DECISION AND ORDER**

Upon a petition duly being filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. The Union seeks to have the bargaining unit in Case 32-RC-4883, which it was certified to represent on September 27, 2001, clarified to include the positions of head/lead teacher and the assistant head/lead teacher. The Employer contends these positions should be excluded because they are supervisory and/or confidential.<sup>1</sup> Because the employees in these positions neither possess nor exercise any of the indicia enumerated in Section 2(11) of the Act, I find that they are not supervisors. They are also not confidential employees because they do not act in a confidential manner to individuals who establish the Employer's labor relations policies nor do they regularly see or work with documents that meet the test for establishing confidential status. Therefore, I shall order the unit clarified to include the positions of head/lead teacher and assistant head/lead teacher.<sup>2</sup>

### **THE FACTS**

The Employer is an organization located in Oakland, California that seeks to provide self-sufficiency and economic empowerment for African Americans and other persons of color through economic and community development, social services and educational services. In furtherance of its goals, the Employer operates the Richmond Main Street Initiative, which seeks to create and implement urban planning in the city of Richmond, California; the Cal Works program which provides career training and guidance for the unemployed; and a Community Building initiative, through which individuals who live in Oakland Housing Authority facilities are taught parenting skills.

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<sup>1</sup> At the election, the Employer challenged their ballots on the basis that they are supervisors. Their ballots were determinative but the parties later stipulated to sustain the challenges for the purposes of the election only. As a result, a Certification of Representative issued on September 27, 2001. There has never been a collective bargaining agreement in effect between the parties covering these employees.

<sup>2</sup> The Board will process a unit clarification petition during the certification year to determine the placement or status of individuals who voted challenged ballots during the election and which the parties have been unable to resolve. *Kirkhill Rubber Co.*, 306 NLRB 559 and cases cited therein at footnote 2.

Finally, the Employer also operates an alternative high school called the Emiliano Zapata Street Academy (herein called the “Academy”), the site of work for the employees that the Union seeks to have clarified into the unit.

The Academy is a four-year college preparatory high school that has been in operation for twenty-eight years. Among the core subjects taught at the Academy are Math, Science, Social Studies, Government, and English. The Academy issues to graduating students diplomas which are endorsed by the Oakland Unified School District (OUSD). In the 2000-2001 school year, the Academy had about 130 students. The students come from throughout the Bay Area to attend the Academy: Often students first contact with the Academy is through referrals from school administrators or the court system. Others apply to the school on their own initiative. Prospective students are interviewed by panels consisting of one teacher and two students. This panel in turn makes recommendations as to the viability of candidates for admission to Patricia Williams Myrick, Academy Principal/Administrator, who is also involved in the admissions decision making process.

In addition to Myrick, the Employer employs eight teachers and two administrative assistants at the Academy. Myrick has been the principal/administrator of the Academy for 24 years. Myrick is the on-site administrator and oversees all of the teachers and administrative assistants in the performance of their job duties.

The employees at issue here, Monica Vaughan and LaTanya Johnson, are full time teachers of English and Social Studies, respectively. In about August 2001, Vaughan was given the title head/lead teacher and Johnson the title assistant head/lead teacher. As a result, Vaughan received a 7% pay increase and Johnson was told she

would receive a 5% increase. Around the same time, both employees also obtained an administrative intern credential which OUSD requires at least one person to have at each school. Vaughan and Johnson are still taking classes to earn their clear administrative credentials.

As a result of these changes Vaughan and Johnson were each relieved of five hours per week in teaching duties. Although they have spent most of this time in substitute teaching duties, they have also worked with the principal in learning about the school budget and purchasing processes and the educational code. Although Vaughan was told she would also be responsible for teacher evaluations, she has yet to complete anything in writing or to formally observe any other teachers. In the past, the entire teaching staff has participated in peer observation and reporting which leads to the formal evaluation by the principal. Vaughan testified she assumes she will be working with the principal to prepare the formal evaluations but has yet to receive any clear instructions in this regard. There are no salary increases associated with these evaluations, which are usually performed at the end of the school year.

Johnson testified she is supposed to be in charge of student discipline which, so far, has only entailed being the person responsible for signing documents related to student discipline. Like Vaughan, she has also worked with the principal to learn the budget and purchasing processes as well as investigating new testing methods. In learning about the school budget, both have had access to teacher salaries but not to labor relations information.

Neither individual has ever hired, fired, disciplined, transferred, suspended, laid off, recalled or rewarded another employee nor have they been told they have the

authority to do so. Like all other teachers, both participate in interview panels for prospective employees and have made recommendations in this regard. However, this process has not changed since receiving their new titles in about August 2001. Both Vaughan and Johnson testified that their job duties have not changed since becoming head/lead and assistant head/lead teacher, other than learning about the budget and purchasing processes. Although Vaughan was told she will be completing written teacher evaluations, she has not yet done so and does not have a clear picture of what her involvement will be in the process.

### **THE ANALYSIS**

Section 2(11) of the Act defines a supervisor as one who possesses "authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or reasonably to direct them, or to adjust their grievances, or effectively to recommend such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but would require the use of independent judgment." An individual need possess only one of the supervisory powers enumerated in Section 2(11) to qualify as a supervisor; however, supervisory status exists only if that power is exercised with independent judgment on behalf of management, and not in a routine or clerical manner. Nevertheless, the statute expressly insists that a supervisor 1) have authority 2) to use independent judgment 3) in performing such supervisory functions 4) in the interest of management. These latter requirements are conjunctive." *NLRB v. Security Guard Service*, 384 F.2d 143, 147-148 (5th Cir. 1967). The burden is on the party alleging supervisory status to prove that it, in fact, exists. *N.L.R.B. v. Kentucky River*

*Community Care, Inc.*, 532 U.S. 706, 121 S.Ct. 1861 (2001). Further, in making determinations regarding supervisory status, "the Board has a duty to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect."

*Westinghouse Electric Corporation v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cert. denied 400 U.S. 831.

There is no record evidence that Vaughan or Johnson, as lead and assistant lead teacher, possess or exercise any of the primary supervisory indicia. Since assuming these positions, their job duties have not changed other than to learn about the school's budget and purchasing processes. As all of the other teachers, they have continued to participate in employment interview panels, in the same manner as in the past.

Vaughan has not yet evaluated any other teachers and what she has been told about her role in the future is too speculative to conclude it would involve any supervisory duties. Although they may have received salary increases, the record evidence does not support a finding that this occurred as a result of assuming any supervisory duties.

Regarding their asserted status as confidential employees, while Vaughan and Johnson may have access to budget and other financial information including teacher salaries, this raw financial information is not considered by the Board to be the type of confidential labor relations information that would prejudice an employer's bargaining strategy in future negotiations if prematurely disclosed to a union. *Pullman Inc.*, 214 NLRB 762 (1974). By regular access, the Board does not mean mere potential or theoretical access; rather, it means that the employee regularly must handle, read or otherwise work with bargaining strategy materials or similar documents that would meet

the *Pullman* access test. *Inland Steel Co.*, 308 NLRB 868, 873 (1992). There is no evidence that Vaughan or Johnson handle, read or otherwise work with such materials or documents.

Accordingly,

### **ORDER**

**IT IS HEREBY ORDERED** that the unit that was the subject of the September 27, 2001 Certification of Representative in Case 32-RC-4883 be, and it hereby is, clarified to include the classifications of lead/head teacher and assistant lead/head teacher employed by the Employer at its Emiliano Zapata Academy in Oakland, California. The unit, as clarified is:

All full-time and regular part-time administrative employees, teachers, lead/head teacher and assistant lead/head teacher employed by the Employer at its Emiliano Zapata Academy in Oakland, California; excluding all other employees, confidential employees, guards, managerial employees, and supervisors as defined in the Act.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 20, 2002.

Dated at Oakland California this 6th day of May, 2002.

/s/ Veronica I. Clements  
Veronica I. Clements,  
Acting Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, California 94612-5211

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